

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 425 CUTTACK, MONDAY, MARCH 23, 2009 / CHAITRA 2, 1931

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd March 2009

No. 2301—li/1(BH)-113/1995(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th February 2009 in Industrial Dispute Case No. 109 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of Orissa Agro Industries Corporation Limited, Dhenkanal and their Workman Shri Bharat Chandra Das was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 109 OF 2008

Dated the 18th February 2009

Present :

Shri P. C. Mishra, O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Project Manager,
Orissa Agro Industries Corporation
Limited, Regional Office, Dhenkanal.

.. First Party—Management

And

Shri Bharat Chandra Das,
C/o Dhruba Charan Das,
At Madhupur, P. O. Alanahat,
Dist. Jagatsinghpur.

.. Second Party—Workman

Appearances :

For the First Party—Management	..	None
For the Second Party—Workman himself	..	Shri S. B. Mishra, Advocate

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 456—li/1(BH)-113/1995-L.E., dated the 8th January 1996, but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li/21-32/2007-L.E., dated the 4th April 2008 :—

“Whether termination of employment of Shri Bharat Chandra Das, Amin with effect from the 27th March, 1993 in form of refusal of employment by the Project Manager, Orissa Agro Industries Corporation Limited, Dhenkanal is legal and/or justified ? If not, what relief he is entitled to ?”

2. The case of the workman in brief is that he was working as an Amin under the management on daily wage basis @ Rs. 15 per day but he was being paid monthly. It is stated that while continuing as such up to the 24th August, 1989 he was appointed as Sales In-charge on daily wage basis and continued to receive his wages on monthly basis. It is stated that in order to undergo an operation the workman remained on leave from the 18th February 1993 and on his discharge from hospital and after availing leave for the purpose when he submitted his joining report on the 27th March, 1993 the management did not allow the workman to continue in his service any further with effect from the said date and in the manner he was refused employment without any written order. According to him, he having rendered continuous and uninterrupted service under the management for more than four years, he was entitled to the protection of law as envisaged under Section 25-F of the Industrial Disputes Act but the management without complying with the aforesaid provisions of law terminated his service with effect from the 27th March, 1993 which is illegal as well as unjustified. The workman, in the premises, has prayed for his reinstatement in service with full back wages.

3. The management resisting the claim of the workman filed its written statement asserting therein that the present dispute being squarely relatable to a tripartite settlement, the reference is bad in law and untenable. Further, it is indicated in the written statement that the workman having admitted to have been employed as a daily wager, the scope of remaining on leave and submitting joining report after expiry of leave are all misconceived. It is further stated that the persons employed as casual labourer or N.M.R. not being entitled to any relief like other persons being holders of definite posts, question of retrenchment or refusal of employment is untenable. The specific case of the management is that the engagement of the workman being on daily wage basis and in relation to a particular Scheme, he was not entitled to enjoy the statutory and other benefits like other employees in regular roll of the management. It is stated that since the workman remained absent from the 18th February, 1993 and approached with a joining report on the 26th March, 1993 after availing self-acclaimed leave, there was no scope for providing any engagement to the workman. It is pleaded that the workman having voluntarily abandoned the job with effect from the 18th February, 1993 he is not entitled to the reliefs claimed.

4. On the basis of the aforesaid pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) “Whether the termination of employment of Shri Bharat Chandra Das, Amin with effect from the 27th March 1993 in form of refusal of employment by the Project Manager, Orissa Agro Industries Corporation Limited, Dhenkanal is legal and/or justified ?
- (ii) If not, what relief he is entitled to ?”

5. Earlier the dispute was decided *ex parte* as the management did not participate in the hearing and on restoration of the case though it filed its written statement but did not appear on the date of hearing as a result of which it was again set *ex parte* vide Order No. 64, dated the 20th October, 2008. The Workman thereafter on being called upon to adduce evidence submitted his evidence on affidavit and proved five documents which have been marked as Exts. 1 to 5.

6. In his evidence submitted on affidavit the workman has fully corroborated the facts mentioned in his statement of claims. Exts. 1, 2 and 3 filed and proved by the workman reveal that the workman was employed by the management and Ext. 5, the copy of the discharge certificate granted by the Angul Hospital reveals that being ill he was admitted in the Hospital and was discharged on the 8th March, 1993. In view of the workman’s unchallenged evidence that he had rendered continuous service under the management and further in absence of any evidence to substantiate the pleadings of the management, it is held that the management was required to comply with the provisions of Section 25-F of the Industrial Disputes Act while terminating the services of the workman and non-compliance of the same renders its action to be illegal and unjustified. Hence, it is held that the termination of employment of the workman with effect from the 27th March, 1993 in the form of refusal of employment by the management is neither legal nor justified.

7. In view of the finding, as aforesaid, the workman is held entitled to reinstatement in service forthwith. However, he is not entitled to any back wages in absence of any pleadings to the effect that from the date of his termination from the 27th March, 1993 till date he was not gainfully employed elsewhere.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
18-02-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
18-02-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor

K. C. BASKE

Under-Secretary to Government